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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,755	04/23/2001	Vasily A. Topolkaev	44040-254221	4991

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EXAMINER

BOYD, JENNIFER A

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/12/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/840,755

Applicant(s)

TOPOLKARAEV ET AL.

Examiner

Jennifer A Boyd

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102/103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 - 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wnuck et al. (US 5,939,467).

Wnuck is directed to a composition derived from blends of various polymers which are useful in applications such as feminine hygiene products, diapers, training pants and the like (column 20, lines 20 – 25 and column 37, lines 50 – 55).

As to claim 1, Wnuck teaches that two or more polymers selected from the categories of moisture sensitive polymers and biodegradable polymers and additionally from the categories of thermally sensitive polymers, mechanically limited polymers, polymers difficult to melt process, hydrolytically cleavable aromatic/aliphatic polyester copolymers, oxidized ethylene/carbon monoxide copolymers and high melting aliphatic polyesters (column 20, lines 52 – 60) are blended and melt processed to create films among other products (column 20, lines 44 – 50). The Examiner equates the moisture sensitive polymers to Applicant's "water soluble polymer".

As to claim 4, Wnuck teaches that a thermally sensitive polymer such as certain linear, saturated aliphatic polyesters may be used in the composition. Wnuck notes that many thermally sensitive, aliphatic polyesters are known to be biodegradable and compostable (column 11, lines 65 – 67 and column 12, lines 1 – 10).

As to claim 5, Wnuck teaches that polycaprolactone polymers may be used in the composition (column 12, lines 25 – 55).

As to claim 6, Wnuck teaches that a moisture sensitive polymer, or “water soluble polymer”, such as polyvinyl alcohol, may be used in the composition (column 10, lines 33 – 48).

As to claim 7, Wnuck teaches that external plasticizers can also be included in the composition such as polyethylene glycol (column 10, lines 60 – 65).

As to claims 10 and 11, Wnuck teaches that the film formed from the composition of the invention will typically contain between 1 – 50% by weight of a moisture sensitive polymer (column 20, lines 62 – 67).

As to claims 12 and 13, Wnuck teaches that the film formed from the composition of the invention will typically contain between 10 – 80%, preferably from about 20 – 60% of biodegradable elastomer polymers (column 24, lines 57 – 65).

As to claims 14 and 15, Wnuck teaches that the films formed from the compositions of the invention will typically have a thickness of from about 0.01 mm to about 0.2 mm, preferably from 0.012 to about 0.051 mm (column 38, lines 18 – 25).

As to claim 16, Wnuck teaches that films formed from the compositions of the present invention are well suited for use as a backsheet (column 38, lines 18 – 24). Wnuck teaches that a nonwoven topsheet may be attached to the film backsheet (column 38, lines 43 – 56).

Art Unit: 1771

As to claim 17, Wnuck teaches that the composition is useful in applications such as feminine hygiene products, diapers, training pants and the like (column 20, lines 20 – 25 and column 37, lines 50 – 55).

As to claim 18, Wnuck teaches that the composition is useful in applications involving disposable absorbent articles (column 37, lines 40 – 55).

As to claims 1 – 3 and 8 – 9, although Wnuck does not explicitly teach the claimed water vapor transmission rate of greater than about $2500\text{g/m}^2/24$ hours as required by claim 1, water vapor transmission rate of greater than about $3000\text{g/m}^2/24$ hours as required by claim 2, water vapor transmission rate of greater than about $3500\text{g/m}^2/24$ hours as required by claim 3, elongation at break of greater than 100% as required by claim 8 and elongation at break of greater than 200% as required by claim 9, it is reasonable to presume that water vapor transmission rate of greater than about $2500\text{g/m}^2/24$ hours as required by claim 1, water vapor transmission rate of greater than about $3000\text{g/m}^2/24$ hours as required by claim 2, water vapor transmission rate of greater than about $3500\text{g/m}^2/24$ hours as required by claim 3, elongation at break of greater than 100% as required by claim 8 and elongation at break of greater than 200% as required by claim 9 is inherent to Wnuck. Support for said presumption is found in the use of like materials (i.e. a film comprising a biodegradable polymer and water soluble polymer with a thickness range of 0.01 to 5 mils) which would result in the claimed property. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of water vapor transmission rate of greater than about $2500\text{g/m}^2/24$ hours as required by claim 1, water vapor transmission rate of greater than about $3000\text{g/m}^2/24$ hours as

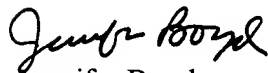
Art Unit: 1771

required by claim 2, water vapor transmission rate of greater than about $3500\text{g/m}^2/24$ hours as required by claim 3, elongation at break of greater than 100% as required by claim 8 and elongation at break of greater than 200% as required by claim 9 would obviously have been present once the Wnuck product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 703-305-7082. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Jennifer Boyd
August 7, 2003

